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March 8, 2002

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OUR FILE NO.
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
c/o Vistrionix, Inc.
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002

Re: Amendment of Section 73.202 (b)
Table of Allotments
Alberta and Dinwiddie, Virginia,
Whitakers and Garysburg, North Carolina
MM Docket No. 00-245

Dear Mr. Caton:

Transmitted herewith on behalf of MainQuad Broadcasting, Inc., are an original and four copies of its **COMMENTS WITH RESPECT TO "REPLY TO RESPONSE TO ORDER TO SHOW CAUSE"** in the above-referenced proceeding.

If there are any questions concerning this submission, please contact the undersigned directly.

Sincerely,



John M. Pelkey

JMP/blr

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MAR - 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Order to Show Cause issued on December 21, 2001, the Commission directed

MainQuad hereby submits its Comments with respect to that “Reply.” As will be shown below, the Reply actually serves to confirm that the public interest would be better served by adopting MainQuad’s original proposal and allocating Channel 276 to Whitakers, North Carolina, than by allocating Channel 276 to Garysburg, North Carolina. The decisive public interest advantage of the MainQuad proposal is made apparent by the following

chart, which sets forth the public interest benefits of each of the two proposals:

Proposal	MainQuad	Garysburg Radio
First local transmission service for Garysburg	Yes	Yes
Continued First Local Transmission Service for Alberta	Yes	Yes
First local transmission service for Whitakers	Yes	No
Creation of Class C facility on Channel 276 with concomitant service to 172,026 people (in excess of 110,000 people more than would be served by a Class A facility in Garysburg)	Yes	No
Fair reimbursement to MainQuad for Changing Channels	Yes	No

- I. Garysburg Radio's Retraction of Its Unconditional Commitment to Reimburse MainQuad for its Expenses if WSMY-FM is Ordered to Change Channel Negates a Fundamental Premise of the Order to Show Cause and Adversely Affects the Ability of WSMY-FM to Serve the Public Interest.

Although Garysburg Radio attempts to bury the point in a footnote, the Reply is perhaps most significant for its revelation that the Order to Show Cause was premised upon a fundamental misrepresentation made by Garysburg Radio concerning its commitment to reimburse MainQuad for its reasonable costs in moving WSMY-FM to Channel 299 if the Commission forces such a channel change on that station. In its Comments filed on January 29, 2001, Garysburg Radio, as part of its argument that Channel 276 should be allocated to Garysburg, pledged that "... in the event that Channel 299A is substituted for Channel 276A, and the authorization for WAQD(FM) [the former call sign of WSMY-FM] is modified accordingly, Garysburg Radio will reimburse the

permittee of WAQD(FM) for its reasonable expenses associated with the change in channel.” Comments of Garysburg Radio at p. 3. This commitment was not conditioned in any way.

The Commission specifically relied upon this statement in its Order to Show Cause. At Paragraph 3 of the Order to Show Cause, the Commission stated “Garysburg Radio has agreed to reimburse MainQuad for the reasonable costs incurred in connection with the change of the station WSMY-FM channel.” Again, the commitment was not conditioned in any way.

Now, however, Garysburg Radio seeks to backtrack on its earlier commitment. Thus, in footnote 2 of its Reply, Garysburg Radio states that it will reimburse MainQuad only if Garysburg Radio “ultimately is the permittee of the proposed Garysburg station.” Garysburg Radio should not be permitted to so glibly recant the representation that formed an underlying basis of the Order to Show Cause.

Garysburg Radio’s proposal to force MainQuad to change WSMY-FM’s channel will result in an immediate financial expenditure by MainQuad. This is because the current interference situation being confronted by WSMY-FM means that MainQuad will need to change the WSMY-FM channel virtually immediately upon conclusion of this rulemaking. In addition, given the fact that WSMY-FM has been off the air, it would make no sense to have the station re-commence operations on Channel 276 only to change channel once a Garysburg station begins operating on that channel. Although the channel change can be economically justified if it is part and parcel of an ultimate reallocation of Channel 276 to Whitakers, the modification of the WSMY-FM license to specify operation on Channel 299, if not accompanied by a reallocation of Channel 276 to Whitakers, will result in an immediate expenditure of funds by MainQuad for which there is no offsetting economic

benefit. Because Garysburg Radio has now backtracked on its earlier commitment, however, Garysburg Radio would have MainQuad incur this expense without the realistic possibility of reimbursement for years. This type of expenditure directly affects the station's bottom line – with a concomitant degradation of the ability of the station to serve the people of Alberta and the surrounding area.

In its Response to the Order to Show Cause, MainQuad asked the Commission to take steps to help ensure that Garysburg Radio would honor its commitment to reimburse MainQuad.¹ MainQuad sought such reassurance given the fact that Garysburg Radio is not a licensee and had not identified its principals – thus allowing Garysburg Radio to sink into oblivion as a way of avoiding its commitment. Rather than using the opportunity afforded by its Reply to allay concerns about its financial ability and the bona fides of its commitment to reimburse MainQuad, Garysburg Radio has retracted that commitment. The Commission should not countenance such behavior. That commitment was an essential element of Garysburg Radio's counterproposal and its retraction should result in the counterproposal's dismissal.

II. Garysburg Radio is Equivocating as to Whether Channel 276 Should be Allocated to Garysburg or to Whitakers.

In addition to backtracking on its commitment to reimburse MainQuad, Garysburg Radio's Reply also reveals that Garysburg Radio is equivocal when it comes to its commitment toward the establishment of a new station in Garysburg. The very first argument raised by Garysburg Radio in its Reply is that the modification of the WSMY-FM license to specify operation on Channel 299 would not necessarily deprive Whitakers of service because "[i]f the WSMY-FM license were modified to Channel 299A, then

¹ See Response to Order to Show Cause of MainQuad Broadcasting, Inc., p. 7, n. 5 (filed Feb. 11, 2002).

Channel 276A would be available for allotment at either Garysburg or Whitakers.” Reply at p.2. This is a curious statement to be made by the party that is nominally proposing the allocation of a channel to Garysburg. Garysburg Radio argued in its Comments filed one year ago in this proceeding that MainQuad’s proposal to provide first local service to Whitakers on Channel 276 should be rejected in favor of its proposal to allocate that same channel to Garysburg, a community which Garysburg Radio alleged to be in greater need of first local service. Now, however, Garysburg Radio is equivocating on its earlier proposal. No longer is the need for first local service to Garysburg deemed to be paramount. Instead, implicitly acknowledging the legitimacy of MainQuad’s claim that the public interest would be better served by the allocation of Channel 276 to Whitakers, rather than Garysburg, Garysburg Radio is touting the fact that its proposal would permit allocation of Channel 276 to *either* Garysburg or Whitakers.

Garysburg Radio cannot have it both ways. Either its proposal is one whereby Channel 276 is to be allocated to Garysburg or it is one whereby Channel 276 is to be allocated to Whitakers. In either case, it is now clear that the public interest would not be served by rejecting the MainQuad proposal to reallocate Channel 276A from Alberta to Whitakers and forcing WSMY-FM to change channel.

If Garysburg Radio’s proposal is to have Channel 276 allocated to Garysburg, the Commission must recognize that the proposal would be contrary to the public interest for it would result in more than 100,000 people being deprived of additional service. Because of separations considerations, only a Class A facility can be established at Garysburg, whereas under the MainQuad proposal a Class C facility can be established at Whitakers. The difference in coverage between the two facilities is enormous. The Class A facility at

Garysburg would serve only 58,166 people,² whereas the Class C facility at Whitakers would serve 172,026 people.³ By allocating Channel 276 to Garysburg, the Commission thus would be depriving 113,860 people of additional service. At the same time, allocation of Channel 276 to Garysburg would produce no offsetting public interest benefit. The provision of first local transmission service that Garysburg Radio ballyhooed as justifying the allocation of Channel 276 to Garysburg rather than Whitakers is no longer a factor inasmuch as MainQuad Communications, Inc., which is a MainQuad affiliate, has now agreed to modify the license for WPTM to specify Garysburg as that station's community of license⁴ -- with the result that Garysburg will receive its first local transmission service, and will receive that service far quicker than would be the case if Channel 276 were allocated to Garysburg as a result of Garysburg Radio's proposal.

If, on the other hand, Garysburg Radio's proposal is not to have Channel 276 allocated to Garysburg, but to use Garysburg as a way station for the eventual allocation of the channel to Whitakers, then, for all intents and purposes, Garysburg Radio is in agreement with MainQuad that allocation of Channel 276 to Whitakers would better serve the public interest than would allocation of that channel to Garysburg and thus has abandoned its proposal to allocate Channel 276 to Garysburg. In that case, Garysburg has undermined its own proposal to allocate the channel to Garysburg given the Commission's long-standing allocations principle that a proponent's abandonment of its allocation proposal will result in the dismissal of that proposal. With Garysburg Radio's

² See Reply Comments of MainQuad Broadcasting, Inc., Exhibit 1 (Engineering Statement of Frank White) (filed February 13, 2001).

³ See Comments of MainQuad Broadcasting, Inc., Exhibit 1 (Engineering Statement of Frank White) (filed January 29, 2001).

⁴ MainQuad Communications, Inc., filed a Petition for Rulemaking seeking the change in WPTM's community of license on February 8, 2002.

abandonment of its proposal to allocate the channel to Garysburg, the Order to Show Cause is now moot and must be withdrawn by the Commission.

III. Not only is WPTM's Proposal to Establish Garysburg as the Station's Community of License Bona Fide and in Furtherance of the Public Interest, but Garysburg Radio's Attempt to Belittle that Proposal is Ultimately Self-Defeating for It Undermines Garysburg Radio's Claim that Garysburg is More Deserving of Service that Whitakers.

Apparently realizing that the MainQuad proposal to reallocate WPTM's Channel 272A from Roanoke Rapids, NC, to Garysburg, NC, undercuts any public interest justification for the allocation of Channel 276 to Garysburg, Garysburg Radio calls into question the bona fides of that proposal. According to Garysburg Radio, the reallocation is "more a matter of form than of substance" because WPTM already provides city-grade service over Garysburg. Reply at p.2. In so arguing, however, Garysburg Radio is striking at the very heart of the Commission's scheme for allocating channels and, in the process, is disclosing the bankruptcy of its own proposal to reallocate Channel 276A to Garysburg.

Section 307 of the Communications Act requires the Commission to effectuate a "fair, efficient, and equitable" distribution of licenses among the nation's various communities. Taking its cue from this statutorily-imposed requirement, the Commission has held that, "as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied" and the Commission thus looks favorably on proposals to provide first local transmission service. *Modification of FM and TV Authorizations to Specify a New Community of License* (MM Docket No. 88-526), 5 FCC Rcd 7094, 7096 (1990). Indeed, the very point of MM Docket No. 88-526 was to create a mechanism whereby currently-operating stations could change their communities of license. Given separations requirements, a high proportion of those stations necessarily would effectuate such changes with little or no modification of their

technical facilities and the Commission routinely has authorized such changes in the recognition that the public interest would be served by a change that constitutes a change in community of license with no, or only a minor, concurrent change in facilities. *See, e.g., Pueblo, Pueblo West, Canon City and Calhan, CO*, (MM Docket No. 96-232), 13 FCC Rcd 690 (1998) (four mile difference in transmitter site locations).

There is a distinction between receiving a service and enjoying a local transmission service. While all stations are expected to serve the public within their service areas, each station has a special obligation to serve the public in its community of license. Indeed, Section 73.3526 of the Commission's rules requires each station to air programming that deals with the particular issues of importance to its community of license. By proposing to the Commission that WPTM's community of license be changed so as to afford first local transmission service to Garysburg, WPTM obligated itself to provide that special service to Garysburg.

Moreover, Garysburg Radio itself has relied almost exclusively on the distinction between transmission service and received service in its very proposal to reallocate Channel 276 to Garysburg for the sole public interest basis cited by Garysburg Radio for allocating that channel to Garysburg rather than Whitakers is the fact that Garysburg is slightly larger than Whitakers. By now arguing that coverage, rather than local transmission service, is the relevant factor, Garysburg Radio finds itself in the uncomfortable position of being forced to confront the fact that its proposal to allocate Channel 276 to Garysburg would cause more than 100,000 people to be deprived of additional service and is thus inferior to MainQuad's proposal.⁵

⁵ Even assuming that Garysburg Radio is correct in its newly-asserted claim that allocations decisions should be based on the extent to which a community already receives city-grade service, the fact is that the use of such a criterion would conclusively argue in favor of allocating Channel

IV. MainQuad's Proposal would Ensure Continued Service to Alberta.

In what has become a standard refrain for Garysburg Radio, it claims in its Reply that the MainQuad proposal would somehow result in a disruption of service to Alberta. This is simply untrue. MainQuad has proposed that a new channel be allocated to Alberta, has committed to apply for that channel if the channel is allotted, has committed to construct the new Alberta facilities if it is awarded the construction permit for those facilities and has committed to keep the current Alberta station in operation until the new Alberta station commences operation. As a result, there would be no gap in the provision of service to Alberta and Garysburg Radio's apparent assertion that only under its proposal would Alberta continue to receive service is utterly unfounded.

V. MainQuad's Proposal, Supplemented by its Commitment to Establish Garysburg as WPTM's Community of License, Accomplishes all of the Objectives of Garysburg Radio's Proposal while Also Allowing for Local Transmission Service to Whitakers and Additional Received Service to More than 100,000 People.

Because Garysburg Radio's Reply calls into question both its willingness to reimburse MainQuad for its expenses and the bona fides of its proposal for the creation of a new station at Garysburg, the question that must be asked at this point is whether there really is a Garysburg Radio proposal before the Commission, or whether the Commission is simply being manipulated in order to satisfy an ulterior motive on the part of Garysburg Radio. Even if the Garysburg Radio proposal is taken at face value, however, the record is

276 to Whitakers rather than Garysburg. MainQuad commissioned engineer Frank White to compare the principal community coverage enjoyed by the residents of Garysburg with that enjoyed by the citizens of Whitakers. That comparison reveals that Garysburg presently receives city-grade service from six radio stations (WPTM, WLGQ, WZRU, WRTP-FM, WCBT(AM) and WSMY(AM)), whereas Whitakers receives city-grade service from only five stations (WTRG, WFXK, WRDU, WKTC and WYFL). Moreover, the stations providing city-grade coverage of Garysburg tend to be less powerful, locally-oriented stations, whereas the stations providing city-grade coverage of Whitakers are all, with the single exception of WKTC, 100,000 watt stations that primarily provide programming focused on Raleigh, North Carolina, and provide little, if any, programming of local interest to the residents of Whitakers.

now clear that the MainQuad proposal is far superior to the Garysburg Radio proposal.

This is graphically depicted as follows:

Proposal	MainQuad	Garysburg Radio
First local transmission service for Garysburg	Yes	Yes
Continued First Local Transmission Service for Alberta	Yes	Yes
First local transmission service for Whitakers	Yes	No
Creation of Class C facility on Channel 276 with concomitant service to 172,026 people (in excess of 110,000 people more than would be served by a Class A facility in Garysburg)	Yes	No
Fair reimbursement to MainQuad for Changing Channels	Yes	No

There can be no doubt but that the public would be far better served under the MainQuad proposal. As a result, WSMY-FM should not be forced to change channel and the Order to Show Cause should be withdrawn.

Respectfully submitted,

MAINQUAD BROADCASTING, INC.

By: 
John M. Pelkey

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1000 Potomac Street, NW
Fifth Floor
Washington, DC 20007
202/965-7880


March 8, 2002

Declaration of Daniel Berman

I, Daniel Berman, declare the following to be true under penalty of perjury:

1. I am the President of MainQuad Broadcasting, Inc., licensee of WSMY-FM. In that role, I have first-hand knowledge of the facts set forth in the foregoing Comments with Respect to "Reply to Response to Order to Show Cause."
2. I have reviewed the foregoing Comments with Respect to "Reply to Response to Order to Show Cause." The factual statements made therein are correct to the best of my knowledge, information and belief.

Dated March 8, 2002


Daniel Berman

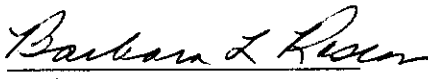
CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Garvey, Schubert & Barer, hereby certify that I have on this 8th day of March, 2002, sent copies of the enclosed **COMMENTS WITH RESPECT TO "REPLY TO RESPONSE TO ORDER TO SHOW CAUSE"** by hand-delivery or First Class, United States mail, postage prepaid, to the following:

Anne Goodwin Crump, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209-3801
(Counsel for Garysburg Radio)

John D. Poutasse, Esq.
Leventhal, Senter & Lerman P.L.L.C.
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
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Barbara L Rascon

*Hand Delivery
March 8, 2002